

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR-7489-E
)	
Petition for Determination of Effective)	
Competition in various Pennsylvania)	
Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: April 16, 2008

Released: April 17, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petition is unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise

⁶47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petition at 3-4.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petition at 5.

¹²*See* Petition at 5 and Exhibit 2.

¹³*See* Petition at 3.

area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a five digit zip code basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

¹⁴*Id.* at 6. Comcast is the largest MVPD in the Communities of Bell (Jefferson County), Big Run, Brady, DuBois, Falls Creek, Gaskill, Hawthorn, Horton, Knox, New Bethlehem, Perry, Punxsutawney, Reynoldsville, Ridgway (Borough), Ridgway (Township), Sandy, Summerville, Sykesville, Timblin, Troutville, Union, Westover, Winslow, Worthville, and Young. However, Comcast is unable to determine which MVPD is the largest in the Communities of Beaver, Canoe, Henderson, McCalmont, Olive, Redbank, Ringgold, and Washington because the DBS subscribership data obtained from SBCA is aggregated and does not break down the individual subscribership of each DBS provider. Nevertheless, Comcast argues that it is subject to effective competition because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Comcast subscribers also exceeds 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

¹⁵Petition at 6. Comcast states that because five digit zip codes do not perfectly align with franchise boundaries, it has reduced the reported number of DBS subscribers in each zip code by an allocation ratio (the number of households in the franchise area over the number of households in the zip area). *Id.* See, e.g., Comcast of Dallas, L.P., 20 FCC Rcd 17968, 17969-70 (MB 2005) (approving of a cable operator’s use of a Media Business Corporation “allocation factor, which reflects the portion of a five digit postal zip code that lies within the border of the City,” to determine DBS subscribership for that franchise area).

¹⁶Petition at 8 and Exhibit 6.

¹⁷47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **IS GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Beaver	PA3501
Bell (Clearfield County)	PA3339
Bell (Jefferson County)	PA2859
Big Run	PA0872
Brady	PA0722
Canoe	PA2861
Du Bois	PA2861
Falls Creek	PA0044
Gaskill	PA2999
Hawthorne	PA1388
Henderson	PA2996
Horton	PA1370
Knox	PA3041
Limestone Township	PA3507
McCalmont	PA2359
New Bethlehem	PA0262
Oliver	PA3000
Perry	PA2998
Porter	PA2975
Punxsutawney	PA0458
Redbank	PA1982
Reynoldsville	PA0317
Ridgway Borough	PA0465
Ridgway Township	PA1925
Ringgold	PA3034
Sandy	PA0049

Snyder	PA1284
Summerville	PA1687
Sykesville	PA0318
Timblin	PA3036
Troutville	PA2850
Union	PA2851
Washington	PA1611
Westover	PA3328
Winslow	PA2030 PA2360
Worthville	PA3035
Young	PA2860

ATTACHMENT B

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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Beaver Township	PA3501	59.50%	200	119
Bell (Jefferson County)	PA2859	30.10%	811	244
Big Run	PA0872	27.70%	282	78
Brady	PA0722	20.20%	742	150
Canoe	PA2861	49.20%	592	291
Du Bois	PA0042	23.20%	3,614	838
Falls Creek	PA0044	25.10%	414	104
Gaskill	PA2999	29.10%	247	72
Hawthorne	PA1388	39.00%	213	83
Henderson	PA2996	30.20%	563	170
Horton	PA1370	22.80%	663	151
Knox	PA3041	32.30%	415	134
McCalmont	PA2359	34.50%	391	135
New Bethlehem	PA0262	49.30%	489	241
Oliver	PA3000	31.70%	438	139
Perry	PA2998	28.90%	498	144
Punxsutawney	PA0458	27.60%	2,748	759
Redbank	982	56.30%	574	323
Reynoldsville	PA0317	34.40%	1,117	384
Ridgway Borough	PA0465	39.70%	1,927	765
Ridgway Township	PA1925	38.91%	1,069	416
Ringgold	PA3034	58.70%	305	179

Sandy	PA0049	23.40%	4,387	1,027
Summerville	PA1687	54.10%	209	113
Sykesville	PA0318	25.70%	548	141
Timblin	PA3036	25.90%	58	15
Troutville	PA2850	19.50%	82	16
Union	PA2851	34.50%	354	122
Washington	PA1611	26.80%	742	199
Westover	PA3328	24.40%	169	48
Winslow	PA2030 PA2360	34.11%	966	340
Worthville	PA3035	21.11%	31	7
Young	PA2860	27.72%	687	190

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Bell Township (Clearfield County)	PA3339	315	14	4.44%
Limestone Township	PA3507	669	18	2.7%
Porter	PA2975	565	41	7.3%
Snyder	PA1284	937	36	3.8%